

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

MAY 11 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Appellant,

v.

JESUS FAQUNDO RODRIGUEZ-  
ZAYA,

Appellee.

2 CA-CR 2006-0124  
DEPARTMENT A

MEMORANDUM DECISION

Not for Publication  
Rule 111, Rules of  
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054468

Honorable Howard Fell, Judge Pro Tempore

REVERSED AND REMANDED

Barbara LaWall, Pima County Attorney  
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Tucson  
Attorneys for Appellant

Robert J. Hooker, Pima County Public Defender  
By Lori J. Lefferts

Tucson  
Attorneys for Appellee

V Á S Q U E Z, Judge.

¶1 Jesus Faqundo Rodriguez-Zaya was charged with transportation of a dangerous drug for sale, possession of marijuana, and possession of drug paraphernalia. The trial court granted Rodriguez-Zaya’s motion to suppress evidence seized during a search of his person and vehicle after finding there was no probable cause for the underlying arrest. The state appeals from the trial court’s grant of the motion to suppress. We reverse.

### **Facts and Procedural Background**

¶2 “We view the evidence presented at the suppression hearing in the light most favorable to sustaining the trial court’s ruling.” *State v. Rosengren*, 199 Ariz. 112, ¶ 2, 14 P.3d 303, 306 (App. 2000). On the evening of October 26, 2005, at the request of another officer, Tucson Police Officer Tony Winters stopped a vehicle being driven by Rodriguez-Zaya. The other officer, who had apparently been watching an area for possible drug activity, had radioed Winters that the officer observed Rodriguez-Zaya commit a traffic violation. When Winters asked for his driver’s license, registration, and proof of insurance, Rodriguez-Zaya responded in Spanish, and Winters (who did not speak Spanish) assumed he did not speak English. Winters then asked Rodriguez-Zaya for his “dentificacion.” Rodriguez-Zaya responded by either shaking his head or saying “no.” Winters testified that throughout his almost-seven-year law enforcement career, he had never encountered a Spanish speaker who did not understand him when he asked for identification in this manner. Winters understood Rodriguez-Zaya’s response to mean “he didn’t have any [identification] on his person,” and arrested him for “driving without [identification].”

¶3 Winters then asked Rodriguez-Zaya to get out of the vehicle. As he exited the vehicle, Winters smelled marijuana. Winters searched Rodriguez-Zaya incident to the arrest and found \$2,500 in cash, a small baggy of marijuana, and title to the vehicle. Rodriguez-Zaya concedes on appeal that an officer also found methamphetamine in the car.

¶4 Rodriguez-Zaya was charged with transportation of a dangerous drug for sale, a class two felony, possession of marijuana, a class six felony, and possession of drug paraphernalia, also a class six felony. Rodriguez-Zaya moved to dismiss the case for lack of probable cause for the arrest. He moved to suppress the evidence because it was obtained incident to an unlawful arrest and for lack of reasonable suspicion to make the traffic stop. After an evidentiary hearing, the trial court granted Rodriguez-Zaya's motion to suppress and the state's subsequent motion to dismiss the charges without prejudice for the purpose of filing this appeal.

### **Discussion**

¶5 We review a trial court's ruling on a motion to suppress for an abuse of discretion. *Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d at 306-07. We defer to the trial court's findings of fact unless clearly erroneous, but "we are not bound by its legal conclusions." *Id.* "We apply the law to the facts de novo in determining whether probable cause existed." *State v. Aleman*, 210 Ariz. 232, ¶ 15, 109 P.3d 571, 577 (App. 2005).

¶6 Probable cause to arrest hinges upon whether the officer has "reasonably trustworthy information and circumstances [that] would lead a person of reasonable caution

to believe that a suspect has committed an offense.” *State v. Keener*, 206 Ariz. 29, ¶ 15, 75 P.3d 119, 122 (App. 2003), *quoting State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08 (2000), *supp. op.*, 204 Ariz. 572, 65 P.3d 953 (2003); *see also* A.R.S. § 13-3883(A). The state has the burden of proving the existence of probable cause. *State v. Will*, 138 Ariz. 46, 49, 672 P.2d 1316, 1319 (1983). And an arrest made without probable cause results in suppression of evidence obtained in connection with the illegal arrest. *State v. Mendez*, 115 Ariz. 367, 369, 565 P.2d 873, 875 (1977).

¶7 Under A.R.S. § 28-1595(B), a driver “who fails or refuses to exhibit [a] driver license . . . on request [of an officer] is guilty of a class 2 misdemeanor.” Thus, to establish probable cause to arrest for a violation of § 28-1595(B), the state must show the officer had sufficient information to lead a reasonable person to believe the driver either failed or refused to exhibit a valid driver’s license upon request. *See Keener*, 206 Ariz. 29, ¶ 15, 75 P.3d at 122.

¶8 The only evidence presented at the suppression hearing on the issue of probable cause was Winters’s uncontroverted testimony. He testified that, based upon his understanding of Rodriguez-Zaya’s response, it was “apparent” that he did not have any identification. Winters testified, “[h]e indicated to me that he didn’t have it.” On its face, this testimony appears to establish that probable cause existed for Winters to arrest Rodriguez-Zaya under § 28-1595(B). There was no evidence or argument that Rodriguez-Zaya in fact had identification on his person or in the car. Nor was there any evidence or

argument that he had failed to comprehend what Winters had asked for. Nonetheless, at the close of the hearing the trial court found “there was no probable cause to arrest the defendant” and granted Rodriguez-Zaya’s motion to suppress. The trial court did not state on the record its reasons for granting the motion.

¶9 We recognize there is no requirement in criminal cases for trial courts to make findings of fact. *State v. West*, 173 Ariz. 602, 607-08, 845 P.2d 1097, 1102-03 (App. 1992). But, our supreme court has “strongly urge[d]” trial courts to state on the record their reasons for their decisions in criminal cases to lessen the burden of, and allow for more efficient, appellate review. *State v. Fisher*, 141 Ariz. 227, 236 n.1, 686 P.2d 750, 759 n.1 (1984).

¶10 The record shows the trial court had credibility concerns related to the existence of probable cause even before Winters testified. The court expressed skepticism, apparently believing initially that the state’s position was that the officer had probable cause to arrest when he could smell marijuana as he approached Rodriguez-Zaya’s vehicle. The following discussion between the trial court and the prosecutor ensued:

THE COURT: So I thought . . . in your pleadings you said the probable cause was the smell of marijuana when Winters walked up to the car to interview Mr. Zaya?

[THE PROSECUTOR]: The probable cause for the arrest was that he didn’t have any identification and that’s standard fare for this particular unit to arrest based upon no ID.

THE COURT: And the probable cause is for what crime?

[THE PROSECUTOR]: No identification.

THE COURT: Is that a felony?

[THE PROSECUTOR]: It's a misdemeanor committed in the officer's presence, your Honor. And the officer has the discretion to arrest at that particular time as probable cause.

. . . .

THE COURT: . . . [W]hen Officer Winters asked for defendant's license, defendant did not comply with this request—assuming he understood what he was asked. Officer Winters also noticed a strong odor of marijuana emitting from the vehicle when he made contact with the defendant. I guess that this was just to impress upon me this strong odor of fresh marijuana.

So this strong odor of fresh marijuana was from a small package of marijuana in the defendant's pocket wrapped in cellophane.

Not too credible is it . . . ?

[THE PROSECUTOR]: . . . I can't say whether—

THE COURT: I can. And I will when I hear from—but I think we should proceed with the Motion to Suppress first, because I am not convinced at all. I will hear from—but based on what I read, I am not convinced there was probable cause. That's the road you have to hoe.

Let's get your witness in here so I can hear from him.

During his testimony, Winters replied “[n]o” when the trial court asked him if he spoke Spanish.

¶11 “The credibility of witnesses is [typically] a question for the trier of fact whose determination will not usually be disturbed on appeal.” *State v. Pike*, 113 Ariz. 511, 514, 557 P.2d 1068, 1071 (1976). Nonetheless, “a trial court . . . may not arbitrarily reject testimony from a disinterested and unimpeached witness.” *Nystrom v. Mass. Cas. Ins. Co.*, 148 Ariz. 208, 214, 713 P.2d 1266, 1272 (App. 1986), *citing State v. Roberts*, 138 Ariz. 230, 232, 673 P.2d 974, 976 (App. 1983); *see also State v. Nevarez*, 178 Ariz. 525, 527, 875 P.2d 184, 186 (App. 1993) (“A police officer is not per se ‘interested’ merely by virtue of his involvement in the criminal investigation.”). After Winters testified, the trial court did not express the same credibility concerns it had mentioned about probable cause prior to his testimony. As we have noted, the trial court summarily granted the motion to suppress without making any factual findings on the record. We are therefore left to speculate about whether the trial court’s initial skepticism had any bearing on its ruling on the issue of whether Winters had probable cause to arrest Rodriguez-Zaya for failure to produce identification. We are not willing to engage in such speculation.

¶12 Under the circumstances, the trial court’s ruling was not supported by “substantial evidence.” *See State v. Marquez*, 135 Ariz. 316, 318, 660 P.2d 1243, 1245 (App. 1983). “Because [Rodriguez-Zaya] failed to provide the officer with his operator’s license, the officer had probable cause to arrest him.” *State v. Bonillas*, 197 Ariz. 96, ¶ 7, 3 P.3d 1016, 1018 (App. 1999). We therefore conclude the trial court abused its discretion in granting the motion to suppress.

¶13 The state also argues the trial court erred in granting the motion to suppress on the ground that the officer lacked reasonable suspicion to stop Rodriguez-Zaya’s vehicle. We question whether this issue is even before us. Although the minute entry states the trial court granted Rodriguez-Zaya’s motion to suppress for lack of reasonable suspicion, it is clear from our review of the suppression hearing transcript that the court neither addressed this issue at the hearing, nor allowed the parties to do so. *See State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992) (when hearing transcript and minute entry conflict, appellate court attempts to ascertain trial court’s intent). Furthermore, its only finding at the hearing was that “there was no probable cause to arrest.” Because the record does not reflect that this issue has been addressed below, we, likewise, do not address it on appeal. *See State v. Smith*, 208 Ariz. 20, n.3, 90 P.3d 221, 224 n.3 (App. 2004).

¶14 For the foregoing reasons, we reverse the trial court’s grant of the motion to suppress. We remand for further proceedings consistent with this decision.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge